SUPREME COURT, U. S.
FILED
APR 25 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968
No. 1317

POMONA VALLEY CENTER, INC., a California corporation *et al.*,

Petitioners,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Respondents.

On Appeal to the California Court of Appeal Second Appellate District, Division Two.

PETITION FOR WRIT OF CERTIORARI.

SMITHERS, GOOD & POTTER and
BAKER, ANCEL AND REDMOND,
626 Wilshire Boulevard,
Los Angeles, Calif. 90017,
Attorneys for Petitioners.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 685-9790

SUBJECT INDEX

Page

Citation to Opinions Below 1

Jurisdiction 2

Questions Presented 2

Statutes Involved 3

Statement of the Case 8

Reasons for Granting the Petition 13

California Taxpayers Protesting Valuation of Property for Ad Valorem Taxes and Seeking to Show Discrimination Have No Remedy Before the Administrative Board nor in the California Courts 13

Appendix A. Opinion of the Court of Appeal .....App. p. 1

Appendix B. Extract of Testimony of Members of Board of Equalization From Transcript of Hearing Before Board of Equalization .... App. p. 14

TABLE OF AUTHORITIES CITED

Cases — Page

A. F. Gilmore Co. v. County of Los Angeles, 186 Cal. App. 2d 471, 9 Cal. Rptr. 67 18

Best v. County of Los Angeles, 228 Cal. App. 2d 655, 39 Cal. Rptr. 665 16

County of Amador v. State Board of Equalization, 240 Cal. App. 2d 205, 49 Cal. Rptr. 448 21

County of Sacramento v. Hickman, 66 Cal. 2d 841, 428 P. 2d 593 16

De Luz Homes, Inc. v. County of San Diego, 45 Cal. 2d 546, 290 P. 2d 544 15

Floresta, Inc. v. City Council, 190 Cal. App. 2d 599, 12 Cal. Rptr. 182 18

Griffith v. County of Los Angeles, 267 A.C.A. 944.. 15

Hanks v. State Board of Equalization, 229 Cal. App. 2d 427, 40 Cal. Rptr. 478 ..... 16, 17

Interstate Commerce Commission v. Louisville & Nash. R.R., 227 U.S. 88, 33 S. Ct. 185, 57 L. Ed. 431 22

Leach Corp. v. County of Los Angeles, 228 Cal. 2d 634, 39 Cal. App. 2d 654 ..... 10, 14, 15, 19, 21

Londoner v. Denver, 210 U.S. 373, 28 S. Ct. 708, 52 L. Ed. 1103 22

Louisville and Nashville Railroad Co. v. Public Service Commission of Tennessee, 249 F. Supp. 894 20

Michaels v. Watson, 229 Cal. App. 2d 404, 40 Cal. Rptr. 454 16

Morgan v. U.S., 304 U.S. 1, 58 S. Ct. 773, 82 L. Ed. 1129 22

Rancho Santa Margarita v. San Diego County, 135 Cal. App. 434, 26 P. 2d 716 18

Page

Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 340 20

Southern California Telephone Co. v. Los Angeles County, 45 Cal. App. 2d 111, 113 P. 2d 773 15

Township of Hillsborough v. Cromwell, 326 U.S. 620, 66 S. Ct. 445, 90 L. Ed. 358 20

Universal Consolidated Oil Co. v. Byram, 25 Cal. 2d 353, 153 P. 2d 746 21

Web Service Co. v. County of Los Angeles, 242 Cal. 2d 1, 51 Cal. Rptr. 753 .....13, 14, 15

Miscellaneous

1 Advisory Commission on Intergovernmental Relations, The Role of the States in Strengthening the Property Tax (June 1963), pp. 25-29, 144-146 .....14, 18

1 Advisory Commission on Intergovernmental Relations, The Role of the States in Strengthening the Property Tax (June, 1963), pp. 131-134 22

California Legislature, Joint Interim Committee on Assessment Practices, Final Report (1959, the Coolidge Report), pp. 38-39 19

40 Opinions of the Attorney General (1962), p. 261 17

Rules

California Rules of Court, Rule 976 1

Statutes

California Administrative Code, Title 18, Sec. 2703 5

California Constitution, Art. XI, Sec. 12 3

California Constitution, Art. XII, Sec. 1 3

California Constitution, Art. XIII, Sec. 9 6

Page

California Government Code, Sec. 15606 7
California Government Code, Sec. 15607 7
California Government Code, Sec. 15640 7
California Revenue and Taxation Code, Sec. 401 4
California Revenue and Taxation Code, Sec. 405 5
California Revenue and Taxation Code, Sec. 407 8
California Revenue and Taxation Code, Sec. 408 8
California Revenue and Taxation Code, Sec. 616 5
California Revenue and Taxation Code, Sec. 646 7
California Revenue and Taxation Code, Sec. 1602 5
California Revenue and Taxation Code, Sec. 1603 5
California Revenue and Taxation Code, Sec. 1605 6
California Revenue and Taxation Code, Sec. 1609 8
California Revenue and Taxation Code, Sec. 1610 8
California Revenue and Taxation Code, Sec. 1818 ..... 4, 14, 18
California Revenue and Taxation Code, Sec. 1819 ..... 4, 14
United States Code, Title 28, Sec. 1257(2) 2
United States Constitution, Fourteenth Amendment 2, 20
United States Constitution, Fourteenth Amendment, Sec. 1, Cl. 3 3
United States Constitution, Fourteenth Amendment, Sec. 1, Cl. 4 3

Textbooks

75 Harvard Law Review, pp. 1374, 1380-1382, 1384-1386, 1392-1395 17
54 Journal of the American Bar Association, pp. 957, 958 17
43 Washington Law Review, pp. 821, 860 18

IN THE

Supreme Court of the United States

October Term, 1968
No. .....

POMONA VALLEY CENTER, INC., a California corporation *et al.*,

Petitioners,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Respondents.

On Appeal to the California Court of Appeal, Second Appellate District, Division Two.

PETITION FOR WRIT OF CERTIORARI.

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of a Court of Appeal of the State of California, Second Appellate District, Division Two entered in the above-entitled case, in Civil No. 31827.

Citation to Opinions Below.

Pursuant to the determination of the District Court under Rule 976 of the California Rules of Court, the opinion thereof was not published. It is printed, however, in Appendix A hereto, *infra,* commencing at page 1 thereof. The opinion of the trial court delivered

from the bench is unrecorded. It is set forth, however, in pages 29-51 of the Reporter's Transcript certified herewith.

The petition for hearing in the Supreme Court was denied on January 29, 1969 and the order of denial is reported in the minutes of the Supreme Court for that date in 70 A.C. 6 (p. 3 Minutes, January 29, 1969).

Jurisdiction.

The date of the judgment of the Court of Appeal was December 2, 1968. A timely petition for hearing in the Supreme Court of the State of California was denied on January 29, 1969.

The jurisdiction of this court is invoked under the provisions of 28 U.S.C. §1257(2) (1948) in that the Board of Supervisors of the County of Los Angeles, sitting as a Board of Equalization, so conducted the hearing on the applications of the Petitioners for assessment reductions, as to deny the Petitioners of due process of law and equal protection of the laws contained in the Fourteenth Amendment of the United States Constitution.

Questions Presented.

Were the Petitioners denied procedural due process or the equal protection of the laws in any of the following respects:

1. By the appellate court in making the presumption of validity of the act of a public official conclusive.

2. By the failure of the Board of Equalization to make findings of fact upon which an effective review could be had.

3. By exclusion of the sales ratio studies of the witness for petitioners and by the failure to require the assessor to disclose the tentative State Board ratio studies in his possession at the time of the hearings, for the purpose of determining the prevailing ratio of assessed to fair market value within the taxing jurisdiction on the lien date.

4. Bias or prejudice of the Board of Equalization.

5. By an erroneous concept of law on the part of the Board of Equalization as to the methods of showing discrimination.

Statutes Involved.

United States Constitution, Amendment Fourteen, Section 1, Clauses 3 and 4

> ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the law."

California Statutes in 1960 provided:

California Constitution, Article XI, Section 12, a portion of which provides as follows:

> "All property subject to taxation shall be assessed for taxation at its full cash value."

The first sentence of California Constitution, Article XIII, Section 1, which provides:

> "All property in the state except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided."

Revenue and Taxation Code §401,

"Except as provided in this part, all taxable property shall be assessed at its full cash value."

Revenue and Taxation Code §1818,

"The Board shall each year prepare tabulations showing for each county the ratio of assessed to full cash value of locally assessable tangible property. The tabulations shall show, in such a way as to prevent identification of individual parcels, the ratio of assessed to full cash value of each parcel of such tangible property in the sample of any survey in the County made in the last year pursuant to §1815. The tabulation shall also show the derivation of the total full cash value of the locally assessable tangible property on the current roll from the total full cash value of the locally assessable tangible property on the roll of the prior year pursuant to §1817. All such tabulations shall be open to inspection by all persons interested."

Revenue and Taxation Code §1819,

"As soon as tabulations have been made pursuant to Section 1818, but not later than August 1, the Board shall give the Assessor of each county a reasonable opportunity to examine and discuss with it that portion of the tabulations affecting property in his county. After making any adjustment it deems appropriate as the result of such discussion, but not later than September 2, it shall make available for public inspection all such tabulations and shall publish the ratio of assessed to full cash value of locally assessable tangible property for each county."

Administrative Code, Section 2703:

"Between the date the notice is given pursuant to the regulation 2702 and September 1, tabulations pertaining to the county are open to and available for inspection during regular business hours at the office of the board in Sacramento, by the county assessor, any deputy assessor designated by him, *any official or employee of the county designated by the board of supervisors* and *any official or employee of a taxing agency within the county designated by its governing body.*" (Emphasis added).

Revenue and Taxation Code Section 405:

"Annually, the Assessor shall assess all the taxable property in the county, except stated as property, to the persons owing, claiming, possessing, or controlling it at twelve o'clock meridian of the first Monday in March. The Assessor shall ascertain such property between the first Monday in March and July."

Revenue and Taxation Code Section 616, first paragraph thereof:

"On or before the first Monday in July, annually, the Assessor shall complete the local roll."

Revenue and Taxation Code Section 1602:

"Until the equalization is finished, the local roll shall remain in the Clerk's office for the inspection of all persons interested."

Revenue and Taxation Code Section 1603:

"Annually, on the first Monday in July, the Board of Supervisors shall meet as the County

Board of Equalization to equalize the assessment of property on the local roll. It shall continue in session for that purpose, from time to time, until the business of equalization has been disposed of, but not later than the third monday in July."

Revenue and Taxation Code Section 1605:

"After giving notice prescribed by its rules, the County Board may increase or lower any assessment on the local roll in order to equalize the assessment of property on the local roll."

California Constitution, Article XIII, Section 9:

"A State Board of Equalization, consisting of one member from each congressional district . . . whose duty it shall be to equalize the valuation of the taxable property in the several counties of the state for purposes of taxation . . . the boards of supervisors of the several counties of the State shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; provided, such state and county boards of equalization are hereby authorized and empowered, under such rules of notice as the county board may prescribe, as to the county assessments, and under such rules of notice as the board may prescribe as to the action of the state board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll; . . ."

Section from Government Code Section 15606: "The State Board of Equalization shall:

* * *

"(e) Prepare and issue instructions to assessors designed to promote uniformity throughout the State and its local taxing jurisdictions in the assessment of property for the purpose of taxation. It may adapt such instructions to varying local circumstances and to differences in the character and conditions of property subject to taxation as in its judgment is necessary to attain such uniformity."

Government Code Section 15607:

"The board shall summon assessors to meet with it or its duly authorized representatives at least once annually, at places within the State it designates, to study or discuss problems of administration of assessment and taxation laws and to promote uniformity of procedure in tax matters throughout the State."

Government Code Section 15640:

"The State Board of Equalization shall make surveys in each county and city and county to determine the adequacy of the procedures and practices employed by the county assessor in the valuation of property for the purposes of taxation and in the performance generally of the duties enjoined upon him by law."

Revenue and Taxation Code §646:

"The records of the Assessor are at all times during office hours open to the inspection of any person charged with the duty of assessing property in the county for any taxing agency."

Revenue and Taxation Code §1609:

"On the hearing of the application, the County Board may subpena witnesses and take evidence in relation to the inquiry."

Revenue and Taxation Code §1610:

"During the session of the County Board, the Assessor and any deputy whose testimony is needed shall be present and may make any statement or produce evidence on matters before the County Board."

Revenue and Taxation Code §407:

"Annually, on the second Monday in July, the Assessor shall transmit a statistical statement to the Board, supplying any statistical information which the Board may require, and shall supply from time to time any other information required by the Board."

Revenue and Taxation Code §408:

"Any information and records in the Assessor's Office which are not required by law to be kept or prepared by the Assessor, are not public documents and shall not be open to public inspection (Added to Stats. 1941, Chap. 605, p. 2501, Section 1)."

Statement of the Case.

The action complained of herein is based upon the attempt of ten shopping center owners to introduce evidence of the ratio of assessed to fair market value prevailing on the lien date in the tax year 1960-1961 during appearances before a local administrative board for the purpose of reduction of assessments of the real property comprising said centers.

The Petitioners appeared on August 4, 1960 before the Los Angeles County Board of Supervisors, sitting as a Board of Equalization. Three of the supervisors heard the matter. A token reduction of approximately four percent of the assessed valuation of improvements presumably on the basis of hardship was granted to one of the Petitioners. No written findings were made by the Board of Equalization. No evidence whatsoever was offered by the Assessor because "The Petitioners did not place any assessment figure in evidence." The entire hearing before the Board of Equalization took approximately two and one-half hours. During the course of the hearing numerous remarks were made relative to representation of petitioners by lawyers and imputing that the attorney representing the Petitioners was soliciting law business and that the Petitioners were not truely interested in equalization of their assessments. Extra-judicial matters were considered to the effect that at least one of the petitioners was a tremendously successful shopping center. Statements were made indicating that so far as the Board of Equalization was concerned the sole manner of showing inequality of assessment was by comparison of petitioners' property with allegedly similar property. The remarks and statements are set forth in Appendix B, *infra.*

The Petitioners introduced evidence of the market value of the realty of each of the petitioning centers based upon capitalization of anticipated future income before depreciation and interest deductions. Evidence was also introduced as to the capitalization rate to be applied to the net operating income for the purpose of capitalization. Apparently the assessor asked for the

income of the centers in each year but had already made his assessed valuation determination and did not know how to determine anticipated future income? In the course of attempting to carry the burden of proof required under the California law to demonstrate inequality of assessment, the taxpayer attempted by questioning to determine whether or not the Assessor had received the tabulations of the ratio assessed to fair market value for tangible assessable property for each county determined by the State Board of Equalization pursuant to acts of the California legislature, but the Board would not compel the disclosure of such ratios from the Assessor. In addition, Petitioners were refused the right to introduce into evidence sales ratio studies over a two and one-half year period preceding the hearing of some 6,970 sales obtained from local realty boards throughout Los Angeles County, checked with the Assessor's records by a person familiar with them formerly employed by the Assessor, and on which studies sums in excess of $3,000.00 has been expended. An offer of proof was made to the effect that such studies were to demonstrate that the prevailing ratio of assessed to fair market value on the lien date was 20.48%. In hearings in the course of the same period of time for sittings by the Board of Equalization for the same year in question on preceding days, the conclusion of the person whose testimony was sought to be introduced relating to the ratio had in fact been admitted by the Board of Equalization. *Leach Corp. v. County of Los Angeles,* 228 Cal. 2d 634, 641; 39 Cal. App. 2d 654 (1964).

The Board of Equalization made no findings of fact as to market value, prevailing ratio or any other matters, such as net operating income or capitalization rates applicable thereto.

Following exhaustion of administrative remedies and payment of taxes extended from the assessments complained of, an action was filed in the Los Angeles County Superior Court requesting a refund. No evidence was admitted by the trial court which reviewed this matter commencing on May 17, 1966 other than copies of the items which had been introduced into the record at the equalization hearing or rejected and the State Board of Equalization tentative ratio tabulations for the tax year 1960-1961 in the possession of the Assessor at the time, all of which items were introduced to determine whether or not the taxpayer petitioners had been denied precedural due process. The tentative tabulations of the State Board in the possession of the Assessor would have disclosed that the ratio prevailing in the County of Los Angeles for the tax year 1969-1961 was 23.3%. The Superior Court concluded, Reps. Tr. pp. 43-51, that it was bound by rulings of the appellate courts holding that the tentative tabulations of the State Board in the possession of the Assessor were not admissible. It further concluded that the testimony relating to ratios based upon the study of sale was properly excludable in that there was no adequate "foundation" laid through the use of sales price rather than market value. It did not feel from the comments of the Board that the record disclosed that

the members of the Board did not intend to consider the plaintiff's evidence.

The appellate court determined that its review was limited to a determination of whether or not the Board's action was founded on substantial evidence and whether the Board's ruling denied due process. It stated that the test of discrimination was what is the fair market value of the property in question and whether the assessed value thereof is equal to the product of fair market value and the ratio of assessment values to fair market value prevailing generally throughout the county. It concluded that the presumption that the Assessor had properly performed his duty of itself constituted substantial evidence and that the opinion testimony of the petitioners relating to the market value of their properties could be completely disregarded by the local Board of Equalization. Therefore, it reasoned, the petitioners could not complain about rulings which excluded proof of the assessment level less than the fair market value prevailing in the jurisdiction. It further concluded that tentative tabulations are properly excludable, that the record did not indicate that the Board had been biased and that because the appellants did not request written findings and because the County Board of Equalization had not been required to make findings at the time the proceedings took place, the appellant could not complain. It implied that, in any event the only finding the Board must make is whether or not the property was correctly "equalized" and, no finding was required as to facts underlying the determination.

Since the hearing in the state Supreme Court was denied, the petitioners seek a writ addressed to the District Court of Appeal.

REASONS FOR GRANTING THE PETITION.

California Taxpayers Protesting Valuation of Property for Ad Valorem Taxes and Seeking to Show Discrimination Have No Remedy Before the Administrative Board nor in the California Courts.

This position is succinctly summarized by the trial court's opinion in *Web Service Co. v. County of Los Angeles,* 242 Cal. 2d 1, 6, 51 Cal. Rptr. 753 (1966), as follows:

> "The way of the taxpayer in questioning an assessment, like that of the transgressor, is hard. At the Board of Equilization level he is confronted by a harassed Board of Supervisors, ordinarily a legislative and executive body, sitting in a quasi-judicial capacity, confronted with a veritable deluge of petitions for re-assessment which must be cursorily heard and determined within a restricted time. He is virtually at the mercy of the Assessor as to determining the countywide average of assessed value to market value for the tax year in question. And in review such as this proceeding, he must overcome the presumption that official duty has been regularly performed. It is to be sincerely hoped that the use of Tax Boards of Appeal will afford the taxpayer a better opportunity to present his contentions."

Furthermore, as stated in the preface of the Report of the Advisory Commission on Intergovernmental Relations:

> "The property tax also has interstate implications, for it weighs in interstate tax differentials and influences the location of industry and the

> movement of trade across State boundaries. In a very real sense it has an impact on Federal-State relations as well, because it affects the capacity of the States with their local governments to provide essential governmental services at levels compatible with the national interest and therefore affects directly the need for Federal grants and other financial aids to State and local governments." Advisory Commission on Intergovernmental Relations, *The Role of the States in Strengthening the Property Tax, Vol. 1 (1963).*

This petition involves the continuing quest of taxpayers to obtain a hearing before a local administrative board following the first effective year for the annual publication of the county ratios and statewide average ratios determined by the California State Board of Equalization. As may be seen from the statutes set forth herein, specifically Revenue and Taxation Code Section 1819, said studies were not to be published until September 2. However, under the provisions of Section 1818, the tentative tabulations were already at the time of the hearing in the possession of the assessor. Under California law, it had been determined in the case of *Leach Corp. v. County of Los Angeles,* 228 Cal. App. 2d 634, 39 Cal. Rptr. 654 (1964) that said tenatative tabulations were privileged. The case of *Web Service Co., Inc. v. The County of Los Angeles, supra,* also reiterated this position, but it held that the published ratio studies for 1960 were not admissible in 1961. The *Web Service* case originally had been unpublished, but because of the request of the county counsel, in this matter when the trial court indicated that it was not bound by an unpublished opinion, it was published by the appellate court.

Under California law as set forth in the opinion of the appellate court herein, there is no trial *de novo,* furthermore, under California law in valuing property, the assessor must adhere to the statutory standard of "full cash value" which term is synonymous with the term "market value." *De Luz Homes, Inc. v. County of San Diego,* 45 Cal. 2d 546, 561-563, 290 P. 2d 544 (1955). In valuing property the capitalization of income method may be used to value property from which income may be or is derived. *De Luz Homes, Inc. v. County of San Diego, supra,* 564. In the event of a reversal of the decision, the matter should be remanded to the County Board of Equalization for determination in accordance with the ruling of the court. *De Luz Homes, Inc. v. County of San Diego, supra,* 574.

In connection with overvaluation of itself, the California taxpayer must prove a conscious failure to exercise a fair and impartial judgment so that even the fact of a grossly excessive assessment does not of itself make the assessment invalid. *Southern California Telephone Co. v. Los Angeles County,* 45 Cal. App. 2d 111, 122, 113 P. 2d 773, 780 (1941). Furthermore, the California courts have accepted the mere opinion statement of the assessor as to the ratio of assessment without any substantiation as substantial evidence sufficient for a reasonable man to rely upon in an administrative hearing. *Leach Corp. v. The County of Los Angeles, supra,* 641. The courts have also held in *Web Service Co., Inc. v. County of Los Angeles, supra,* in the *Pomona Valley Center, Inc.* case for the tax years 1961, #31828, in *Griffith v. County of Los Angeles, et al.,* 267 A.C.A. 944, that the published ratio determinations of the State Board of Equalization for the

tax year prior to the one in question are not admissible before the Board of Equalization, even as the basis of cross-examination of the assessor with respect to the ratio in the current year. At the same time, the same courts hold that the unpublished tentative ratio studies of the board then in the possession of the assessor are privileged and not admissible. In addition, California courts have long held that numbers of identical properties with lower assessment ratios than the alleged comparable property may not be used to show the county-wide ratio. *Best v. County of Los Angeles,* 228 Cal. App. 2d 655, 659, 39 Cal. Rptr. 665 (1964).

In those cases where taxpayers and an assessor had sought to require that assessments be levied at market value, the California courts have condoned the continued violation by county assessors of the statutory mandate of full cash value by holding that continuous fractional assessment can change the clear meaning of the constitution and statutes. *Michaels v. Watson,* 229 Cal. App. 2d 404, 407-409, 415, 40 Cal. Rptr. 454 (1964), *Hanks v. State Board of Equalization,* 229 Cal. App. 2d 427, 429, 432, 40 Cal. Rptr. (1964), *County of Sacramento v. Hickman,* 66 Cal. 2d 841, 428 P. 2d 593 (1967), (holding that the assessment may be at a uniform fraction of full cash value, provided that the latter remains the standard or basis of the assessment and justifying such statement on the theory that this promotes the "equality, uniformity and lack of secrecy which are the goals of a fair tax system.") In *Hanks v. State Board of Equalization, supra,* the court relied upon the State Board of Equalization statewide average ratio determinations for the tax years 1960, 1961 and 1962 of 22.6, 23.5 and 23.8% of true value respec-

tively, and upon the argument of County Counsel to the effect that the State Board ratio determinations for each county were controlling upon the local assessors.

Assessors of the counties of the State of California are required by law to set forth the assessed value of their county on the local roll at the state-wide average ratio or as near thereto as possible. 40 Opinions of the Attorney General, p. 261 (1962). *Hanks v. State Board of Equalization, supra,* 430-432.

Commencing with the tax year 1954-1955, the annual reports of the California State Board of Equalization submited to the Governor and published pursuant to the provisions of the Government Code, disclose the following statewide average ratio: 1955—22.8%; 1956—23.2%; 1957—23.6%; 1958—24.0%; 1959—23.4%; 1960—22.6%; 1961—23.5%; 1962—23.8%. The publications further disclose that in each instance the ratio in the County of Los Angeles was virtually synonymous with the average state-wide ratio.

Mr. Justice Fortas in 54 Journal of the American Bar Association, 957, 958 noted the procedural safeguards are not technicalities. Here the petitioners were seeking to follow the methods urged by the California Legislature and by the California commentators in connection with the problems of secrecy, as well as those recommended by the Advisory Commission in Intergovernmental Relations. See *Inequality in Tax Assessments: New Cures for an Old Ill.* 75 Harv. L. Rev. 1374, 1380-1382, 1384-1386, 1392-1395. (Noting that California is the only state in which a truly representative sample is employed for the purpose for determining market value and ratio); *State Equalization of Lo-*

cal Property Tax Assessments at 50%, 43 Wash. L. Rev. 821, 860. (Noting that in Washington the assessors have disregarded with impunity the full cash mandate and that taxpayers have no effective remedy.) See also Advisory Commission on Intergovernmental Relations, The Role of the States in Strengthening the Property Tax (June 1963), Vol. 1, pp. 25-29, pp. 144-146,

In cases involving other governmental taxing jurisdictions and authorities and actions of the assessor and other administrative board hearings, the California courts have not insisted upon application of evidentiary rules used in jury trial.

Thus in *A. F. Gilmore Co. v. County of Los Angeles,* 186 Cal. App. 2d 471, 476, 9 Cal. Rptr. 67 (1960) and in *Rancho Santa Margarita v. San Diego County,* 135 Cal. App. 434, 26 P. 2d 716 (1935), it was held that local administrative boards are not bound by technical rules of evidence and that evidence which tends to prove fair market value or the ratio of assessment values to market values is relevant. In other types of local board hearings, California courts have deemed that in testimony of attorneys was substantial evidence. *Floresta, Inc. v. City Council,* 190 Cal. App. 2d 599, 608, 12 Cal. Rptr. 182 (1961).

The rationale of the California cases which hold that the State Board tentative tabulations are privileged is that neither the Board of Equalization nor the petitioners are "persons interested" within the meaning of Section 1818 of the Revenue and Taxation Code, *supra,* nor is a member of the Board of Supervisors sitting as a Board of Equalization an "official or employee of a taxing agency" within the meaning of the Administra-

tion Rules of the Board of Equalization. Such reasoning is based solely upon an unpublished letter of a deputy attorney general and not upon any statutory authority. *Leach Corp. v. County of Los Angeles, supra,* pp. 644-646. In another unpublished opinion of the District Court of Appeal, *Shonborn v. County of Los Angeles,* Civil No. 27059, decided within one day of the decision in Leach, on August 3, 1960 before the same Board of Supervisors sitting as a Board of Equalization where an offer of proof was made relating to the fact that the tentative publications would have shown a ratio of 23.3%, the Assessor stated:

> "I have been advised by the State Board that I would get them on the second. The law provides that they will be available to the public, and I consider you the public, on the second of September."

The Appellate Court in the unpublished opinion noted that the answer was not responsive and that had the plaintiffs offered evidence of fair market value of their own property the countywide assessment ratio was material.

The statutory scheme upon which the ratio studies were published is based upon the intent to do away with secrecy in order to vitalize the local appeals machinery and to promote uniform assessments. Cal. Legis., Joint Interim Committee on Assessment Practices, Final Report (1959), commonly known as the Coolidge Report, pp. 38-39. Thus, at page 39, the Committee stated:

> "The State spends over half a million dollars each year to obtain the local assessment ratios. The results of the State Board of Equalization studies

> are of primary importance to every property owner. There is no military, social, or economic reason for keeping the results secret. The only reason for secrecy is to discourage appeals—to put it bluntly, to obstruct the workings of the normal democratic process."

It is thus clear that in substance the taxpayers in the State of California protesting property tax assessments had no effective remedy and that under the circumstances, both the California law and the provisions of the Federal Constitution contained in the Fourteenth Amendment have been violated and the matter should be remanded to the Los Angeles County Board of Equalization for hearing. *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 446, 43 S. Ct. 190, 192, 67 L. Ed. 340 (1923). In addition, the holding of *Township of Hillsborough v. Cromwell*, 326 U.S. 620, 624, 66 S. Ct. 445, 90 L. Ed. 358 (1946) has been ignored, in that the burden was on the state to reduce the discriminatory assessments below the state's full value requirement and that the refusal to admit ratio evidence in the possession of the assessor in substance amounts to leaving the valuation of the taxpayer's property at 100% of market value. In short, the ruling of the California appellate court herein, required the taxpayer to take an upward revision of the taxes of other members of his class. The petitioners have therefore been denied a remedy of equal protection of the law. *Cf. Louisville and Nashville Railroad Co. v. Public Service Commission of Tennessee*, 249 F. Supp. 894, 902-904 (1966) (U.S. District Ct. M.D. Tenn.).

In addition, under the provisions of the Fourteenth Amendment relating to procedural due process of laws,

the petitioners have been denied a hearing by reason of failure to make findings. Thus, in an entirely analogous situation involving the valuation by the California State Board of Equalization of property which it was required to assess in two counties, it was held that the failure of the Board to make findings left the matter incomplete, eludes attack and defense of the parties and frustrates review by the Court. Judicial inability to test the method prevents test of the assessment itself. Judicial review of assessments and assessment practices was held by the court to be impossible and a purported review of specific valuation is meaningless when the assessing agency's valuation methods are obscured by unexplained decisions. *County of Amador v. State Board of Equalization,* 240 Cal. App. 2d 205, 49 Cal. Rptr. 448 (1966). The appellate court neither discussed nor attempted to distinguish the *County of Amador* case, which had been cited to it. In the present case there was no testimony whatsoever from the assessor to the methods of determination of market value or as to the ratios prevailing generally.

Furthermore, compliance with the constitutional requirement for a hearing is not met unless the substance as well as the form of the hearing is granted. *Universal Consolidated Oil Co. v. Byram,* 25 Cal. 2d 353, 361, 153 P. 2d 746 (1944). In reviewing the testimony set forth in Appendix B herein, it is obvious that the Board was biased and determined not to grant a hearing by precluding the admissibility of the testimony of Mr. Stevenson and the tentative tabulations in the possession of the assessor (which testimony had been admitted in part in the *Leach Corp.* case in preceding day). It is submitted that a hearing in form only

was granted. The problem becomes particularly acute when one examines the period of time available for preparation under the statutory system which existed at the time of the hearing. It was literally no more than thirty days. Thus, it is submitted that the actions of the Board are tantamount to a refusal to allow an opportunity for argument. *Londoner v. Denver,* 210 U.S. 373, 386, 28 S. Ct. 708, 52 L. Ed. 1103; refusal to allow reasonable opportunity for cross-examination. *Interstate Commerce Commission v. Louisville & Nash. R.R.,* 227 U.S. 88, 93, 33 S. Ct. 185, 57 L. Ed. 431; or reliance in the concluding steps on the advice of the assessor or the assessor's attorney: *Morgan v. U.S.,* 304 U.S. 1, 19-20, 58 S. Ct. 773, 82 L. Ed. 1129.

Petitioners are not complaining over the question of whether there was a correct or incorrect determination of the value of their property. In fact, they never had a chance to reach this question. They do contend that they are entitled to an impartial tribunal, that the procedure at the hearing should be consistent with the essentials of a fair trial, that the hearing be conducted in such a way that there would be opportunity for the court to determine whether the applicable rules of law and procedure were observed and that the evidence which admittedly is the best evidence of ratio should have been admitted. Otherwise the petitioners are without a remedy. Advisory Commission on Intergovernmental Relations, *The Role of the States in Strengthening the Property Tax, supra,* Vol. 1, pages 131-134.

Respectfully submitted,

SMITHERS, GOOD & POTTER and
BAKER, ANCEL AND REDMOND,
Attorneys for Petitioners.

APPENDIX A.

Opinion of the Court of Appeal.

In the Court of Appeal of the State of California, Second Appellate District, Division Two.

Pomona Valley Center, Inc., Appellant, vs. County of Los Angeles, *et al.*, Respondents, and Consolidated Cases. 2nd Civ. No. 31827.

Filed Dec. 2, 1968.

APPEAL from judgment of the Superior Court of Los Angeles County. Martin Katz, Judge. Affirmed.

Smithers, Good & Potter, and Baker, Ancel & Redmond, for Appellant.

John D. Maharg, County Counsel, and A. R. Early, Assistant County Counsel, for Respondents.

This action was brought by ten shopping centers to recover real estate taxes paid under protest.

The cases involve questions concerning the methods of proving discrimination of unfair assessments of taxpayers of real property with particular problems directed to methods of proof of the ratio prevailing generally within the county of assessed valuation to market valuation. It is the contention of plaintiffs that the assessments of their land for the taxable years 1960-1961 were excessive; that when they presented their protests to the board of supervisors, sitting as a board of equalization on August 4, 1960, and the board approved the assessments made by the assessor, they did not receive a fair hearing and were denied due process. In support of their contentions they allege that the County Board of Equalization was biased and prejudiced; it relied upon an erroneous concept of law as the basis of

showing unequal assessments; the board erroneously excluded substantial material evidence relating to the ratio between assessed valuation and market value; the failure of the board to make findings precluded a meaningful judicial review.

Similar contentions regarding Los Angeles County assessment ratios and practices were considered and rejected by divisions of this court in the cases of *Leach Corp. v. County of Los Angeles,* 228 Cal.App.2d 634, and *Web Service Co. v. County of Los Angeles,* 242 Cal.App.2d 1.

The matter came to trial in consolidated actions before the superior court sitting without a jury; the transcript of the proceedings before the board of equalization, and evidence offered and rejected before the board was received in evidence by the court. The trial court made findings to the effect that the hearing before the board had been fair; there was substantial evidence in the hearings before the board to support the board's determination that the assessments were proper, and not discriminatory. Judgment was given for defendants, from which plaintiffs have appealed. The main issue before the court is whether there was substantial evidence before the board to sustain its decision, and whether appellants were prejudiced by the board's evidentiary rulings with particular regard to the method of proof of the ratio prevailing of assessed valuation to market value.

Our review is limited to a determination whether the board's action is founded on substantial evidence and whether the board's ruling denied appellants due process. The scope of review is explained in *Bank of*

America v. Mundo, 37 Cal.2d 1 at page 5: "The duty of determining the value of the property and the fairness of the assessment is confided to the appropriate county board of equalization. Furthermore, in discharging this duty, the board's determination upon the merits of the controversy is conclusive; the taxpayer has no right to a trial de novo in the superior court to resolve conflicting issues of fact as to the taxable value of his property. (*Universal Consol. Oil Co. v. Byram,* 25 Cal.2d 353, [153 P.2d 746]; *Eastern-Columbia, Inc. v. County of Los Angeles,* 70 Cal.App.2d 497, 500 [161 P.2d 407].) The question presented *to the superior court* in such an action is whether there was evidence of sufficient substantiality before the board to justify the finding (*Kaiser Co. v. Reid,* 30 Cal. 2d 610, 626 [184 P.2d 879]), and *in the absence of fraud or malicious or arbitrary use of its powers* the board is the *sole judge of questions of fact and of the values of property.* (*Los Angeles Gas & Elec. Co. v. County of Los Angeles,* 162 Cal. 164, 170 [121 P. 384].)" (Emphasis added.)

In *A. F. Gilmore Co. v. County of Los Angeles* (1960) 186 Cal.App.2d 471, at pages 476-477, the court stated: "The issue before a reviewing court is whether there was substantial evidence before the board upon which its determination could have been founded. The inquiries which the board makes are: (1) What is the fair market value of the property in question; and (2) whether assessed value thereof is equal to the product of fair market value and the ratio of assessment values to fair market value prevailing generally throughout the county. See *Wild Goose Country Club v. County of Butte, supra,* 60 Cal.App. 339, 343."

There is a presumption the original assessment was correct. The burden is on the taxpayer to produce evidence the assessment was not fair and equitable. (*Leach Corp. v. County of Los Angeles, supra.*)

"The presumption that the assessor did assess all properties fairly and upon an equal basis will sustain the board's implied finding to that effect unless that presumption is overthrown by evidence to the contrary." (*Web Service Co. County of Los Angeles,* 242 Cal. App.2d 1; 7.)

In the case at bench appellants did not sustain their burden so as to compel the board to reject the presumption of validity of the assessments.

In its findings of fact the trial court found that:

"No evidence was introduced or offered on behalf of the county at the hearing before the board regarding the fair market value of plaintiffs' properties nor of the method used by the Assessor to determine such market value nor of the ratio of assessed value to fair market value prevailing generally in the county. The board made no written findings herein. On objection the board excluded from evidence the following matters: (a) Testimony of the witness Stevenson regarding the ratio of assessed value to fair market value prevailing generally in the county. (b) The tentative unpublished tabulations of the State Board of Equalization regarding its determination of the ratio of assessed value to full cash value in Los Angeles County for the 1960-1961 tax year. (c) A legal opinion of Legislative Counsel. (d) The Final Report of the Joint Interim Committee on Assessment Practices of the California Legislature, published in May 1959, referred to as the Coolidge Report.

"All of said rulings pertaining to the admission and exclusion of evidence were correct and fair, and plaintiffs suffered no prejudice therefrom.

"The board did not follow an erroneous concept of law to the effect that lack of equalization could be shown only by comparing plaintiffs' properties with other specific similar properties.

"Plaintiffs were granted a fair hearing by the board. Neither their conduct nor their comments at the hearing show that any members of the board were prejudiced against plaintiffs. . . . It is presumed that the assessments herein as made by the County Assessor and as approved by the board after the hearing thereon held on 4 August 1960 were fair, were not excessive and were equalized with the assessments of locally assessable tangible property generally throughout the County of Los Angeles, California, as of the first Monday in March 1960. *This presumption* constitutes substantial evidence[1] that these assessments were fair and equalized with the average assessments of all locally assessable taxable property throughout the county as of that date.

"The Los Angeles County Board of Equalization committed no error which was prejudicial to plaintiffs at said hearing by excluding evidence offered by plaintiffs or by sustaining objections to questions asked on behalf of plaintiffs; said board's rulings were both correct and fair.

---

[1]This case was tried in the Superior Court on June 21, 1966. The Evidence Code was effective on January 1, 1967. On appeal a reviewing court applies evidence rules for the time of trial. (Witkin, California Evidence 2d Ed., p. 11.) Accordingly, the new rules on presumption did not apply to this trial.

"Said board did not deny due process to plaintiffs by its actions at said hearing. The board neither neglected nor failed nor refused properly to consider the evidence introduced on behalf of plaintiffs at the hearing before said board of plaintiffs' applications for reduction of its assessments herein.

"There is substantial competent evidence in the record of the hearing before the Los Angeles County Board of Equalization to sustain the board's decisions that plaintiffs were not entitled to a reduction of the assessments herein. Plaintiffs failed to establish a prima facie case of assessment discrimination.

"The board was innocent of express fraud in the conduct of said hearings and in reaching its decisions.

"The board correctly applied the legal principles governing the proof of property tax discrimination."

We agree with the trial court. Of course, appellate courts do not weigh conflicting substantial evidence on "insufficiency of evidence" appeals; nor should the superior court when it is reviewing administrative board decisions. (*Strei v. State Personnel Board,* 210 Cal.App.2d 643, 648.)

In 1966 the rule was that "If the presumption affects the burden of proof, the court is still required to affirm a verdict or finding in favor of the party relying on the presumption unless it is possible for the court to find that the adverse party overcame the presumption as a matter of law." (California Evidence Code Manual, C.E.B. (1966), § 2.35, p. 434.)

"Whether a party has discharged the burden of proof is a question for the trier of fact to decide. If the party with the burden of proof fails to establish in the

mind of the trier of fact that requisite degree of belief concerning the fact in issue, the trier of fact is required to rule against him regarding that fact." (California Evidence Code Manual, C.E.B. (1966), § 2.37, p. 435.)

Under the presumption of the fairness and regularity of the assessment and in accordance wih the rule prevailing at the time of the trial that "a finding of fact may rest upon a disputable presumption although all the other evidence is contradictory," (*Strei v. State Personnel Board, supra,* at p. 650), we must affirm the judgment of the trial court. The taxpayers did not sustain their burden of showing the board that the assessor's figures were unfair or discriminating. (*Merchants Trust Co. v. Hopkins,* 103 Cal.App. 473, 478; *Wild Goose C. Club v. County of Butte,* 60 Cal.App. 339, 324. See *Utah Construction Co. v. Richardson,* 187 Cal. 649, 654.)

Turning to the evidence before the board, the taxpayers offered evidence as to the market value of their shopping centers on an anticipated future income capitalization basis founded on limited factors and reasons.

The exhibits received in support of this valuation were computations of the estimated future rental to the owner and lessor of each shopping center capitalized at 10%. In addition, two of the shopping center owners testified as to the market value of their property. The board could conclude that the taxpayers' evidence was of limited weight.

Opinions of value and other expert opinions, *even though uncontradicted,* are worth no more than the reasons and factual data upon which they are based.

"An expert's opinion is no better than the reasons given for it. '"If his opinion is not based upon facts otherwise proved . . . it cannot rise to the dignity of substantial evidence."'" (*San Diego Gas & Elec. Co. v. Sinclair* (1963) 214 Cal.App.2d 778, at 783.)

To the same effect is *Hemmerling v. Tomlev; Inc.* (1967) 67 Cal.2d 572 at 577 where Chief Justice Traynor states that "We cannot agree, however, with the Hemmerlings' contention that the trial court was bound to accept their uncontradicted valuation testimony." A tax case in which the same result was reached is *Bordenave v. Franchise Tax Board,* (1958) 158 Cal. App.2d 291.[2]

But even if the board had credited or given weight to appellants' market value evidence, since these cases were tried on the theory that the ratio of assessments on the taxpayers' property to its value exceeded that generally prevailing in the county, for the taxpayers to sustain their burden it would be necessary for them to submit evidence that there was a disparity of the ratio between that applied to appellants' property and that applied to other property generally prevailing in the county. To prove these contentions, the taxpayers had to show the ratio prevailing generally and the ratio in his case and to at least make a prima facie showing of unfair assessment or show some evidence of the inequality before there was any burden on the assessor. Without this prima facie showing the assessor is not obliged to go

---

[2]See also *People v. Bassett,* 69 A.C. 121 at p. 145, where the court discussed expert testimony which may not be deemed substantial evidence, citing *Estate of Powers,* 81 Cal. App.2d 480, and *Estate of Teed,* 112 Cal.App.2d 638, where the sole testimony of experts was rejected as not being substantial evidence.

forward with any evidence. He may stand on his presumption.

Accordingly, the issue before this court is, did the evidentiary rulings of the board improperly prevent the taxpayer from proving his case? If so, there would be a violation of due process. (*Leach Corp. v. County of Los Angeles, supra,* at p. 642.)

Appellants offered evidence of ratio assessments through the proposed testimony of one J. O. Stevenson. Similar testimony of Mr. Stevenson before the board was analyzed and rejected by the court in *Leach Corp. v. County of Los Angeles, supra,* at pp. 641, 642. The trial court's judgment upholding the board's ruling concerning Stevenson's testimony was not erroneous.

At the board hearing appellants asked Stevenson for his conclusions regarding the ratio of assessed value to fair market value in Los Angeles County as disclosed by his study. Respondents objected on the grounds that no proper foundation had been laid. Appellants' counsel then made an offer of proof. The study which extended over a 2½ year period made it obvious that the ratio pertained to earlier years and not the current tax year. Proof of a discrepancy between the county assessor's ratio and the state board's ratio or Stevenson's ratio for other tax years does not indicate that plaintiffs' property had been subject to a discrepancy against or on a different basis than property generally throughout the county. (*Leach Corp. v. County of Los Angeles, supra,* at pp. 641-642; *Web Service Co. v. County of Los Angeles, supra,* at p. 11.)

For the most part, plaintiffs' efforts at the board hearing were directed toward an attempt to show that

the assessor, Mr. Quinn, who testified at the hearing had used improper methods or used an assessment ratio which was contrary to the State Board of Equalization's ratio for the tax year in question or preceding tax years.[3]

The board's evidentiary rulings could not have prejudiced plaintiffs. Appellants assert that they attempted to put before the board the unpublished ratio of assessed to full cash value of locally assessable tangible property in Los Angeles County prepared by the State Board of Equalization for the tax year in question,[4] and that the board erred in refusing to compel the assessor to disclose the figure.

The subject was raised when counsel for appellants asked the assessor if he had received the unpublished

---

[3]Some of these procedures giving rise to this litigation were remedied at least in part by the 1966-1967 amendments to the Revenue and Taxation Code.

[4]Revenue and Taxation Code, section 1818: "The board shall each year prepare tabulations showing for each county the ratio of assessed to full cash value of locally assessable tangible property. The tabulations shall show, in such a way as to prevent identification of individual parcels, the ratio of assessed to full cash value of each parcel of such tangible property in the sample of any survey in the county made in the last year pursuant to Section 1815. The tabulations shall also show the derivation of the total full cash value of the locally assessable tangible property on the current roll from the total full cash value of the locally assessable tangible property on the roll of a prior year pursuant to Section 1817. All such tabulations shall be open for inspection by all persons interested."

Revenue and Taxation Code, section 1819 (as it read in 1960): "As soon as tabulations have been made pursuant to Section 1818, but not later than August 1st, the board shall give the assessor of each county a reasonable opportunity to examine and discuss with it that portion of the tabulations affecting property in his county. After making any adjustment it deems appropriate as the result of such discussion, but not later than September 2d, the board shall make available for public inspection all such tabulations and shall publish the ratio of assessed to full cash value of locally assessable tangible property for each county."

preliminary determination of the countywide ratio from the State Board of Equalization. The assessor replied that it had not been finalized. Appellants made no attempt to put this tentative ratio into evidence, made no offer of proof regarding it, and never requested the board to compel the assessor to disclose it.

The exclusion of these preliminary tabulations of the ratio of assessed value to full cash value of locally assessable, tangible property in the various counties as made by the State Board of Equalization was squarely upheld in *Leach Corp. v. County of Los Angeles* (1964) 228 Cal.App.2d 634, where the issues are discussed at pages 643 through 646. Identical counsel made similar arguments regarding the board's evidentiary rulings that they make herein.

As to appellants' argument that the board was biased or prejudiced, there is nothing of substance in this record to indicate that the board acted under an erroneous concept of law or that the remarks of the supervisors at the hearing were such as to indicate that they did not fairly hear and consider plaintiffs' application. The transcript does not bear out appellants' interpretation of prejudice. The trial court concluded that the hearing was fair. The court agrees.

The board made no express written findings. The failure of the board to prepare written findings was not error. Written findings of fact had never been required of the local county boards of equalization at the time these proceedings took place; *nor did appellants request that such findings be prepared.*

Prior to 1967, the appellate courts of this state had already reviewed the decisions of local county boards

of equalization on the basis of the implied findings necessary to support each decision. They examined the record (transcript and exhibits) of the proceedings before the board. (*Web Service Co. v. County of Los Angeles* (1966) 242 Cal.App.2d 1, 7; *Leach Corp. v. County of Los Angeles* (1964) 228 Cal.App.2d 634, 637; *De Luz Homes, Inc. v. County of San Diego* (1955) 45 Cal.2d 546, 564.) In judicial proceedings where findings are required (absent proper request under Code of Civil Procedure, § 634) there is no reason why inadequate findings may not be supplemented by reference to the record. The findings are adequate if they permit the court to determine whether the decision is based on lawful principles. (*Doyle v. Board of Barber Examiners* (1966) 244 Cal.App.2d 521, 525.)

In 1967 the Legislature provided for the first time that "Written findings of fact and conclusions of law of the county board *need not be made unless requested in writing by a party prior to the hearing.*" (*Rev. & Tax. Code,* § 1605.5.) Even under this new law, appellants are not entitled to complain of the lack of findings because they failed to request them.

The decisions of the board did make findings regarding the ultimate facts at issue, the correct equalized assessments of these properties. Findings other than those on ultimate issues are, of course, not required. (*California Motor Transport Co. v. Public Utilities Com.* (1963) 59 Cal.2d 270, 273; *Martin v. Alcoholic Bev. Etc. Appeals Bd.* (1959) 52 Cal.2d 259, 264-265.)

Even in eminent domain proceedings findings are required only on the ultimate issue of valuation, not with respect to the facts underlying that determination. (*City of Signal Hill v. Wyse* (1936) 9 Cal.App.2d 641.)

The judgment is affirmed.

Nutter, *Pro Tem**

We concur:

Roth, *P. J.*

Herndon, *J.*

THE COURT: This opinion is not for publication pursuant to the provisions of Rule 976, California Rules of Court.

*Appointed by the Chairman of the Judicial Council.

APPENDIX B.

Extract of Testimony of Members of Board of Equalization From Transcript of Hearing Before Board of Equalization.

Commenting about a prior year's hearing in which Mr. Potter, counsel for appellants, participated, Mr. Hahn [Ex. 1, p. 10] stated:

"Mr. Hahn: I must have to say, really, I must have to say that all I can look back with memory upon is long, long tedious arguing, lawyers screaming, hollering all afternoon until late in the evening.

Mr. Debs: My, my.

Mr. Hahn: And I look back with distasteful memories of the whole program.

Mr. Quinn: The same group is here this year. The same thing is happening this year. They are all in good voice.

Mr. Hahn: I have been here when we have had to send out for our supper because the lawyers wanted to speak so long.

Mr. Potter: Not that night. It was just the ball game.

Mr. Hahn: Now you know why I was angry.

Mr. Potter: They are not playing today.

Mr. Hahn: I know I was mad."

During the course of the testimony of Robert M. Gold [Ex. 1, pp. 26-28], Mr. Debs stated:

"Mr. Debs: All I can say to Mr. Gold is that my friends in business in the Valley scream about the Reseda Shopping Center.

They say you are making so much money and you are bringing the people in there so great that

when you walk in here today complaining about your assessment, I'm a little amazed, and I'll tell you why.

Very frankly, you're the envy of all the Valley, and you know it, don't you?

Mr. Quinn: That's absolutely true."

In response to Mr. Gold's statement to the effect that if he were to listen to gossip, what friends tell him, he wouldn't be at the hearing, because he knew he would never get fair treatment, Mr. Debs replied:

"Don't kid me. You are the envy of the San Fernando Valley people out there."

In response to Mr. Gold's statement that the property had been offered at a million dollars and never a taker, Debs replied that maybe the cash down payment is rather high, and as Mr. Gold leaves, Mr. Debs states:

"Go back to your cash registers and hear them ringing." [Ex. 1, p. 34].

Chairman Dorn, after an argument relating to the introduction of an affidavit of William Brown, stated that if Appellants desired to compare with other property, the address of the other property must be placed in a petition, saying:

"Mr. Dorn: Now as far as I am concerned, if you have not done this in this case or any others, I don't care to hear them, but it is up to the Board whatever they care to do.

Mr. Maharg: I don't think you can quite draw the line that tightly.

Mr. Debs: That's what I was afraid of."

Mr. Debs then goes on at Page 35 after Mr. Potter has been urged to have his witness testify with respect to the substance of the affidavit, stating:

"Now, you and Mr. Watson know the rules of this Board. And to come here today with the affidavit and then to bring for the first time here without any chance of the Assessor to make any comparisons, I think you defeat your own cause and your own clients' cause, because as far as I'm concerned, if you can show me and the evidence that you are unequally assessed and your clients that you are representing, you will have a friend in court.

But this procedure that you have adopted, and you know the rules and you knew them yesterday, and yet today you are persisting in doing the same thing that you did yesterday, I think it's not in the best interests of trying to arrive at a good and fair decision by this Board of Equalization.

Now, I say this in all fairness. If you can show some comparisons and would do what the other people have had to do, the little housewife, or anyone else, has had to do under the rules and did, you would have a fair more receptive Board of Equalization and a far more intelligent Board of Equialization to decide these matters.

Now, if you have got some more cases coming up in the next week or two, I hope you don't continue to repeat this type of treatment. I don't think it's fair to you, it's not fair to me, and it's certainly not fair to your clients."

At page 37:

"Mr. Potter: Well, then, I will have to—you chastised me for time. I will have to do it the laborious way.

Mr. Debs: If you would do it the regular way that everyone else is required to do, you would further your own cause better, Mr. Potter, I assure you."

Mr. Hahn then states, commencing at page 37:

"If we were the County Assessor with an able staff and lawyers and had—and just look at that (indicating)—I wish that we could almost put this in the transcript, the volumes, the written papers, the briefs, the documents that the attorney has on the attorneys' table. It is literally three feet long of documents.

Now, at least some of them should have been given to the assessors, who could read them.

Mr. Potter, I don't think any court in the land of any jurisdiction, from the Supreme Court of the United States down to the lowest justice court, would expect an elected Supervisor who has all the work he had to do running county government and to govern county government and to sit here morning and afternoon from 8:30 in the morning to—they were here until 7:00 o'clock last night, just on the current cases, to read line by line every thick legal brief and prayer and documents that everyone presents to us. It would fill a room."

After Mr. Potter has gone into the qualfications of Mr. Brown to state an opinion relating to the cap-

italization rates used in the shopping center industry, at page 46, Mr. Debs says:

"It's taking us ten minutes to do nothing.

Mr. Hahn: I don't care whether you belong to the International Association of Machinist or the Toastmasters Club or what, but you are taking valuable time of a hundred deputies, the Board of Equalization, two court reports, a full stack here, to determine what clubs you belong to."

Mr. Potter states, commencing at page 47, that he is offering Mr. Brown as a witness who is familiar with the shopping centers, how they are traded, when they are, how lenders estimate the market value, how purchasers in general estimate the value and arrive at value.

Mr. Hahn states at page 48:

"Do you know what I would really like to hear? Maybe it's unfair for me to say this to the Board of Equalization and to your clients, but what I would like to hear you put into evidence before this Board of Equalization is the land, how much it costs, what the Assessor has it assessed for, and you prove that you are being unfairly treated with the people across the street or down the block or anywhere else in Los Angeles County, that the land and the building is not being equally assessed with other shopping buildings or with other markets or with other drugstores, and put that into the record and get right to the heart of the Board of Equalization's job.

But if you are going to ask the color of the eyes and the weight and where were you born and

what school you went to and what church you belong to and take up the time of this Board is certainly not doing a fair thing to the people of Los Angeles County.

Mr. Potter: Mr. Hahn, that is exactly what I'm trying to make you understand, that you can only compare these properties by market value.

Market value is the sole common denominator through which you can compare properties."

Mr. Debs interrupts him and says:

"Get us the name and address of something that you are comparing one of these petitions hereto as against another one and let's quit. I don't know whether you get paid by the hour or not or by the word or not, but somewhere along the line, let's kind of shorten this up."

Mr. Potter then states that in the affidavit of Mr. Brown, it contains certain sales which Mr. Debs responds to by saying:

"You are not going to get the affidavit into evidence. Yesterday, we denied you three times, Mr. Potter, that we wouldn't receive it and you still persisted. You took up a couple of hours on these. Now,—

Mr. Potter: I don't recall that, Mr. Debs.

Mr. Debs: Well, I recall it too well. You tried three times. We were trying to receive it as an exhibit, but then you still wanted to get it back as an affidavit."

Mr. Potter takes issue with the Statement of Mr. Debs. At page 51, Mr. Potter asks the Board to listen to what Mr. Brown is saying, but Mr. Debs says:

"We would like to listen to you if you would get some meat."

Mr. Potter then at page 52 states that he is seeking to introduce then into the record the evidence for the purpose of showing the shopping center values have a capitalization rate typically of about ten per cent. In response the following statements are made:

"Chairman Dorn: And this is your contention?

Mr. Potter: This is my contention.

Chairman Dorn: All right, let's proceed.

Mr. Quinn: That is all it is.

Chairman Dorn: That is the way the Board accepts it. It's the counsel's contention."

At page 53, Chairman Dorn reiterates his statement relating to contentions.

At page 77, after a lengthy discussion and examination of Mr. Brown, the following statement is made by Mr. Hahn:

"I want to ask something. Do my colleagues on the Board, and you don't need to answer me, you are all elected in your own districts, but have you understood what he has been driving at so far, after an hour and 45 minutes?

Mr. Debs: Yes, I understood what he wants, but I don't agree with his conclusions.

Mr. Hahn: Will you explain it to me?

Mr. Debs: Maybe he is going to be able to convince me before the day is over, but not with the type of testimony that has gone on so far.

Mr. Hahn: Did you understand?

Mr. Debs: I understood. I want some comparisons, some unequal assessments as against your clients as against other shopping centers.

Mr. Potter: All right.

Mr. Debs: Your 14 shopping centers—Let's compare some of yours against some of the others that aren't here today."

Commencing at page 123, after Mr. Potter's observation to the effect that the technical rules have been enforced by the Board of such fashion as to require anybody who desires to take advantage of a hearing to come armed with accountants, bookkeepers, the president of the corporation and other people to get matters into evidence, Mr. Debs states:

"Mr. Debs: You couldn't be further from the truth, Mr. Potter. Little housewives have come in here with their little piece of paper, with the name and address of their neighbor on it, and have shown that they were unequally assessed as compared to comparable property in their neighborhood or some place, and the Assessor has had that information ahead of time, and we listened to it, and we have on many occasions reduced the assessment to equalize it with the information that has been brought to our attention.

Mr. Hahn: I would like to refute it, too, for the record, this way. I also think this, that we can pretty well—if the rules of this board in this county were not adhered to—

[Chairman rapping for order.]

Chairman Dorn: Please, gentlemen, Supervisor Hahn is making a statement for the record.

Mr. Hahn: All right, let me finish. I was just saying for the judicial record that it has come to my attention, I don't know whether it's true or not, but it has come to my attention that certain lawyers and certain groups go out and drum up business and say, 'Everybody on the block, if you give me twenty bucks, I'll file your petition, and, if we get it, swell.'

Mr. Quinn: That wouldn't be Mr. Potter.

Mr. Hahn: No, it wouldn't be Mr. Potter.

Mr. Potter: I'll refute that categorically and deny it.

Mr. Debs: Mr. Potter looks like a very fine gentleman.

Mr. Hahn: No, no, no. I said it has come to my attention that people are—Did I say Mr. Potter? I said that it has come to my attention that this is going on, this is why we have such mass protests. Three hundred people come in here. They are not all coming in alone on their own initiative. Certain people are drumming them up, and they are going to fill this place, and they get $20.00 apiece, $5.00 a piece, whatever it may be. Now this is why we are saying if this is the case, then, we must protect someone, the orderly process of county government, because the people of this county do not expect nor do they want a member of the Board of Supervisors to sit here 12 months a year listening to lawyers talk for their clients. What they have got to do is equalize the tax role (sic roll) and get it all completed so the tax collector can send it out. Now, you as a lawyer, and this is your profession, you don't have any more

right of my time than the poorest lady in this county who has a little, old refrigerator or a television set, but she has her right to come before her duly elected representatives to complain about the assessment.

Mr. Potter: What did I do to suggest that remark? What did I do?

Mr. Hahn: You just said that you had to bring up your accountant and your tax collectors and everybody in here to get a fair hearing, and I think that we have been—

Mr. Potter: I don't think this is fair.

Mr. Hahn: I think we have been very fair, two hours and a half for you."

Commencing at page 128 of Exhibit 1, Mr. Quinn in discussing the fact that the Protest was comprised of ten of the one hundred and fifty shopping centers in the county, makes the following statement:

"Mr. Quinn: Now, I say that that is tinging on something, and certainly the people that made that up certainly didn't have any idea of talking about assessed values or equalization or anything else.

Mr. Hahn: What did you think they were trying to do?

Mr. Quinn: I haven't the faintest idea. I presume they want to have—if they get something this year, they'll probably want to be back with 25 next year, I don't know.

Mr. Hahn: You mean to drum up business?

Mr. Quinn: I don't know anything about that. But I want to say that to any informed person in

this county to seek something like that, there has to be something other than a desire for equalization. And I'll put this in the record, if I may [indicating].

Mr. Hahn: I think you should. Put that in there."

At page 129, Mr. Maharg, the County Counsel, states that there is no inference that Mr. Potter has drummed up any business.

"Mr. Hahn: Where? Did I say that at any time?

Mr. Debs: Oh, No.

Mr. Maharg: May I finish with my statements?

Mr. Potter: These statements about drumming up business—

Mr. Hahn: Methinks he protests too loudly. I never said he drummed up business. I just said that I have heard—

Mr. Potter: I certainly want to make the record clear—

Mr. Hahn: All right—

Mr. Debs: I would say that Mr. Potter was an honorable man. I know he wouldn't even do such things.

Mr. Hahn: Let me say this. What I have heard was that actually there are mass meetings, and their neighbor doesn't want to give them the five dollars or the twenty dollars, other neighbors look at them, and sometimes neighbors give them the twenty dollars and then they say, 'I'm going to file down there, but, actually, I don't know what it's all about, but I want to be a good neighbor in

my block, and everybody in my community is doing it and I had better do it.' Now, if that isn't drumming up business, I don't know what is.

Chairman Dorn: Mr. Hahn,—

Mr. Hahn: But I'm not saying the attorney drums up business, because it's unethical and it's against the rules of the State Bar."

Mr. Potter then asked that the record again show his specific objection to these remarks which he takes personally, and the County Counsel suggests that the Board confine itself to the evidence. After more discussion, Mr. Hahn says, commencing at page 131:

"All right, Mr. Potter, listen to this, I never said that you drummed up business. I said it has come to my attention that there have been groups that have been drumming up business. I want the record definitely to state, and you boys that are taking this down in shorthand, put it in carefully that I never said any attorney drummed up business, but there is somebody drumming up business to get three or four hundred people here en masse. They just don't come down here all by themselves."

SUBJECT INDEX

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement	3
Argument	5
1. The Challenged Presumption Is Not "Conclusive."	5
2. Findings of Fact Are Not Required or Needed When an Appellate Court Can Adequately Review a Case by Examining Its Record	5
3. The Board Did Not Follow an Erroneous Concept of Law as to the Methods of Showing Assessment Discrimination	6
4. The Board Properly Excluded the Sales-Assessment Ratio Study Because It Lacked a Proper Foundation	7
5. The Taxpayers Made No Attempt to Put the Tentative, Unpublished State Board Ratio Study Into Evidence, Made No Offer of Proof Regarding It, and Never Requested the Board to Compel the Assessor to Disclose It	8
6. The Record Shows No Member of the Board to Have Been Prejudiced Against the Taxpayers	9
7. Petitioners Misstate Other Aspects of California Law	11
Conclusion	12
Appendix A. Statutes	App. p. 1

TABLE OF AUTHORITIES CITED

Cases

A. F. Gilmore Co. v. County of Los Angeles, 86 Cal. App. 2d 471, 9 Cal. Rptr. 67 7

Birch v. County of Orange, 88 Cal. App. 82, 262 Pac. 788 6

Birch v. County of Orange, 186 Cal. 736, 200 Pac. 647 11

Leach Corp v. County of Los Angeles, 228 Cal. App. 2d 624, 39 Cal. Rptr. 654 .....5, 7, 8, 12

Los Angeles Gas & Elec. Co. v. County of Los Angeles, 162 Cal. 164, 121 Pac. 384 11

McClelland v. Board of Supervisors, 30 Cal. 2d 124, 180 P. 2d 678, cert. den. 332 U.S. 823 7

Rancho Santa Margarita v. San Diego County, 135 Cal. App. 434, 26 P. 2d 716 7

Simms v. County of Los Angeles, 35 Cal. 2d 303, 217 P. 2d 936 11

So. Calif. Telephone Co. v. County of Los Angeles, 45 Cal. App. 2d 111, 113 P. 2d 773 11

Universal Consolidated Oil Co. v. Bryam, 25 Cal. 2d 353, 153 P. 2d 746 7

Rules

California Rules of Court, Rule 976 1

California Rules of Court, Rule 976(b) 1

Statutes

California Constitution, Article XIII, Sec. 9 7

California Evidence Code, Secs. 600-668 5

California Political Code, Sec. 3676 7

California Revenue and Taxation Code, Sec. 1605 8

Page

California Revenue and Taxation Code, Sec. 1605.5 .. 5
California Revenue and Taxation Code, Sec. 1609 .. 7
California Revenue and Taxation Code, Sec. 5138 .. 3
California Statutes of 1939, Chap. 154 7
California Statutes of 1965, Chap. 299 5
California Statutes of 1966, p. 672 8
California Statutes of 1967, Chap. 285 6
United States Code, Title 28, Sec. 1257(2) 2

Textbook

4 Santa Clara Lawyer (1964), pp. 147-165 12

IN THE

Supreme Court of the United States

October Term, 1968
No. 1317

POMONA VALLEY CENTER, INC., a California Corporation, *et al.*,

Petitioners,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the California Court of Appeal, Second Appellate District, Division Two.

BRIEF IN OPPOSITION.

Opinion Below.

Pursuant to its determination under Rule 976 of the California Rules of Court, the opinion of the California Court of Appeal, Second Appellate District, Division Two (hearing denied by the California Supreme Court) was not published.[1] However, it is printed in Appendix A of the Petition.

[1]Rule 976(b) provides that an opinion of a court of appeal shall be published only "if it involves a new and important issue of law, a change in an established principle of law or a matter of general public interest."

Jurisdiction.

The Petition invokes jurisdiction under 28 U.S.C. §1257(2) [pertaining to appeals, not certiorari] alleging that the property tax equalization hearing conducted by the Los Angeles County Board of Equalization, which was the trier of fact herein did not afford due process of law and equal protection of the laws to the petitioning taxpayers.

Questions Presented.

Petitioners allege that at the hearing before the Los Angeles County Board of Equalization they were denied due process because

a. the board was biased,

b. it followed an erroneous concept of law,

c. it excluded an alleged sales assessment-ratio study made during prior years from evidence,

d. it failed to require the county assessor to disclose certain tentative and privileged assessment-ratio studies made by the State Board of Equalization even though no request was made that such studies be disclosed, and

e. it failed to make formal findings of fact even though such findings were not requested by the petitioners.

Petitioners also contend that they were denied due process "by the appellate court in making the presumption of validity of the act of a public official conclusive." They do not further explain nor argue this point.

Statutes Involved.

Additional statutes involved herein are set forth in the appendix hereto.

Statement.

In this litigation ten petitioners contested the 1960 property tax assessments of their shopping centers before the Los Angeles County Board of Equalization. After a hearing[2] the board approved the assessments. The taxpayers then paid their taxes under protest and sued for refunds pursuant to California Revenue and Taxation Code §5138. Sitting in an appellate capacity, the superior court held that the taxpayers had not made a prima facie case of assessment discrimination before the board [C. T. p. 261, para. XII], that the board had given them a fair hearing [C. T. p. 260, para. VI], that the board had ruled correctly on objections to the reception of evidence [C. T. p. 259, para. IV] and had committed no error which was prejudicial to them [C. T. p. 260, paras. V, VIII, X, XI and XIV]. No question was raised in the superior court regarding the lack of findings of fact by the board.

The superior court entered judgment in favor of the County.

The taxpayers then appealed the case to the California Court of Appeal which rendered its opinion (Pet. App. A) in favor of the county. They then petitioned for a hearing before the California Supreme Court on the same grounds asserted herein. This was denied.

At the hearing before the board, as evidence of the value of their shopping centers the taxpayers introduced

---

[2]Superior Court Exhibit 1 is the transcript of this hearing.

Exhibits A to K [Superior Court Ex. 3] which were computations of the estimated future rent to the lessor of each center capitalized at 10%. These exhibits are unsigned and nothing indicates the identity of the person who prepared them or whether he was a qualified appraiser; no reasons were given for the 10% capitalization rate selected.

The owner of the Reseda Plaza Shopping Center also testified to an opinion of its value but gave no reasons for his opinion nor did he disclose any qualifications as an appraiser. Likewise, the owner of the Atlantic Square Shopping Center testified that it had some of the finest chain store tenants in the United States [Ex. 1, p. 82] but had "never paid a cent of income to its owners for the first four years" and then it paid only 6%.

The taxpayers offered no evidence of the fraction of value at which assessments were made throughout the county—generally called the assessment ratio—except for the assessment ratio study made by a witness who was not qualified as an appraiser or as a statistician, who had verified less than ¼th of 1% of the sales upon which he relied, and who admitted that the sales prices did not reflect the actual cash value of the properties sold [Ex. 1, p. 115, lines 1-21].

The county rested without introducing any evidence.

The board made no express written findings of fact except that it approved the assessments of nine of the shopping centers and reduced the tenth one.

At the hearing before the board, the witnesses were sworn and the testimony was transcribed by certified court reporters. Exhibit 1 is the transcript of that hearing.

ARGUMENT.

1. The Challenged Presumption Is Not "Conclusive."

The only presumption regarding the validity of the act of a public official involved in this case is the presumption that public duty was properly performed and that the assessment therefore is correct. The California courts held that this presumption applied in this case because the taxpayers had not sustained their burden of showing the board that the assessor's figures were unfair or discriminating (Pet. App. A, p. 7). This obviously is not a "conclusive" presumption at all. It regulates the burden of proof. In 1960 it also constituted substantial evidence which could be weighed against other evidence, a rule which was abolished when California adopted Division 5 Chapter 3 Sections 600-668 of its Evidence Code in 1967 (Cal. Stats. 1965 ch. 299).

2. Findings of Fact Are Not Required or Needed When an Appellate Court Can Adequately Review a Case by Examining Its Record.

Prior to 1967 the appellate courts of California had always reviewed the decisions of local county boards of equalization by examining the record (reporter's transcript and exhibits) of the proceedings before the board.[3] In 1967 the California Legislature provided that written findings of fact should be made by a county board of equalization if requested by a party (California Revenue and Taxation Code §1605.5, Calif.

---

[3] *Leach Corp. v. County of Los Angeles,* (1964) 22 Cal. App. 2d 624 at 637 (hearing denied by California Supreme Court), 39 Cal. Rptr. 654.

Stats. 1967 ch. 285). In the case at bar, the taxpayers made no such request. See the opinion of the Court of Appeal at pages 11-13 of Appendix A to the Petition.

3. The Board Did Not Follow an Erroneous Concept of Law as to the Methods of Showing Assessment Discrimination.

At page 9 the Petition alleges that the board believed that "the sole manner of showing inequality of assessment was by comparison of petitioners' property with allegedly similar property." It does not further argue the point. Both the superior court and the Court of Appeal found that this was not true (Pet. App. A, p. 5). We agree that this is not the *only* way to show assessment discrimination although it is a legally proper way to do so[4] and the way it is most frequently done. Nothing in the record indicates that the board was under the impression that this was the *only* way. Such evidence of discrimination, would, of course, have justified the board in granting relief to the taxpayers herein. Out of courtesy, the board members several times suggested that if they possessed such evidence they should introduce it (Pet. App. B, pp. 11, 18 and 21). These suggestions were made to dispel some rather strange ideas displayed by the taxpayers.[5]

---

[4]*Birch v. County of Orange*, (1927) 88 Cal. App. 82 at 85, 262 Pac. 788 at 789 (hearing denied by California Supreme Court).

[5]One of the board members asked "Are you saying that two identical shopping centers, removed a mile, two miles from each other, that the same conditions surrounding them, well built, one has a good management, he gets the business, the other guy doesn't have a good management, he doesn't get the business—are you saying we should reduce the guy for his inability to attract or to produce a revenue?" To which the attorney for the taxpayers replied "That is exactly what we are saying." [Ex. 1, p. 73, line 25, to p. 74, line 9].

4. The Board Properly Excluded the Sales-Assessment Ratio Study Because It Lacked a Proper Foundation.

County boards of equalization are created by the California Constitution, Article XIII Section 9. They perform a judicial function.[6] They may act only on the basis of legal evidence.[7] The taxpayers argue (Pet. p. 18) that county boards of equalization "are not bound by technical rules of evidence", citing *Rancho Santa Margarita v. San Diego County,* (1933) 135 Cal. App. 434, 26 P. 2d 716. That case was, however, decided on the basis of a statute which has since been repealed—California Political Code §3676 which provided that "the board may . . . hear and take such evidence . . . as in its discretion it may deem proper." This discretionary power over the reception of evidence was revoked when Section 3676 was repealed in 1939 and replaced by California Revenue & Taxation Code §1609 which provided in its entirety that "On the hearing of the application, the county board may subpena witnesses and take evidence in relation to the inquiry" (California Stats. 1939 ch. 154). The Petition also cites *A. F. Gilmore Co. v. County of Los Angeles,* (1960) 86 Cal. App. 2d 471 at 476, 9 Cal. Rptr. 67 in which the statement was a mere dictum.

The sales-assessment ratio study offered by the taxpayers was excluded because no foundation was laid

---

[6]*McClelland v. Board of Supervisors,* (1947) 30 Cal. 2d 124 at 129, 180 P. 2d 678, cert. den. 332 U.S. 823.

[7]*Universal Consolidated Oil Co. v. Byram,* (1944) 25 Cal. 2d 353 at 360, 153 P. 2d 746;

Leach Corp. v. County of Los Angeles, (1964) 228 Cal. App. 2d 634 at 637 and 641-646, 39 Cal. Rptr. 654 (hearing denied by California Supreme Court).

to show the qualifications, training or experience of the witness to appraise real estate or to make such a statistical study, because the witness didn't know the names of the parties to the sales, because he had not talked to any of the buyers or sellers, because he admitted that the sales prices did not reflect the actual cash values of the properties sold, because he had verified less than ¼th of 1% of his sales data with the brokers involved [Ex. 1, pp. 113, 115] and because the sales data included remote transactions "three and one half years before the 1960 tax lien date." *Leach Corp. v. County of Los Angeles, supra,* at 641.

5. The Taxpayers Made No Attempt to Put the Tentative, Unpublished State Board Ratio Study Into Evidence; Made No Offer of Proof Regarding It, and Never Requested the Board to Compel the Assessor to Disclose It.

So states the opinion of the Court of Appeal (Pet. App. A, p. 11). Furthermore, as the Petition admits at page 14, these tentative and unpublished studies have been held by the California courts to be privileged by statute and inadmissible in evidence until published. *Leach Corp. v. County of Los Angeles, supra.*[8]

The Petition repeatedly states that this tentative, unpublished State Board ratio study was in the possession of the assessor at the time of the board hearing (at pages 3, 14 and 20). The record discloses that, in fact, the assessor did not then possess this information [Ex. 1, p. 122].

---

[8]A recent statute has withdrawn this privilege—California Revenue & Taxation Code §1605 as amended by Calif. Stats. 1966, p. 672 (First Extra Session).

6. The Record Shows No Member of the Board to Have Been Prejudiced Against the Taxpayers.

So found the superior court and the Court of Appeal (Pet. App. B, p. 5). Can anyone seriously contend that the matters quoted from the board's transcript at page 14 of Appendix B of the Petition display anything but good natured bantering? Is a board member guilty of bias because he complains of having been late to a night baseball game a year earlier? The board had complete power to adjourn those proceedings but instead it had worked late the year before to complete them—even at the expense of the first innings of an All Star Baseball Game.

The comments at pages 15-17 of the Appendix to the Petition arose from the taxpayers' attempt to introduce an affidavit and some comparison sales which, in violation of the board's rules, they had failed to submit to the assessor or to the county counsel in advance of the hearing [Ex. 1, p. 31, line 12, to p. 35, line 25]. They argued that they were excused from compliance with the rule because "it was the identical exhibit that was introduced last year" [Ex. 1, p. 31, lines 24-25; p. 32, lines 9-11]! The board merely urged them to obey the rule and explained the reason behind it.

The courts below found that the taxpayers "failed to establish a prima facie case of assessment discrimination" (Pet. App. A, p. 6). They offered no legal evidence of the countywide assessment ratio, and their market value evidence was, at best, highly questionable. It was based on values determined by capitalizing estimated future rents at 10% in the face of testimony from their own witness Udall [Ex. 1, p. 78],

owner of the Atlantic Square Shopping Center, that although it was occupied by some of the finest chain store tenants in the United States [Ex. 1, p. 82], it "never paid a cent of income to its owners for the first four years", and when it started to pay, it paid only 6%. Because the taxpayers did not make a prima facie case, the county rested without introducing any evidence. The board, which had tried hundreds of such cases annually, was fully aware of the discrepancies in the taxpayers' presentation. Many of the remarks of which they complain were simply sympathetic appeals to them to introduce any evidence they might possess which would entitle them to relief.

After he had concluded his case, one of the attorneys for the taxpayers, Mr. Potter, complained of the "technical rules" he had encountered and inferred that the board had been unfair (Pet. App. B, p. 21). The remarks quoted from the board at pages 21-23 of Appendix B of the Petition were in refutation of this charge.

The taxpayers also complain that their counsel was accused of "drumming up business". The expression was first used in a question by Supervisor Hahn [Ex. 1, p. 128, line 11]. The assessor promptly denied that he knew anything about that. Mr. Potter objected to the alleged charge [Ex. 1, p. 128, line 22] and forced Supervisors Hahn and Debs repeatedly to disclaim any charges that Mr. Potter was guilty of such unethical conduct (Pet. App. B, pp. 24-25).

We submit that the courts below correctly found that the taxpayers were granted a fair hearing (Pet. App. A, pp. 5 and 6).

7. Petitioners Misstate Other Aspects of California Law.

A.

At page 15 of the Petition, the taxpayers charge that "even the fact of a grossly excessive assessment does not of itself make the assessment invalid" and that the California taxpayer must also prove conscious fraud. Such a benighted rule actually did exist in this state until 1912.[9] It was never followed thereafter. The Petition cites a case which gave it lip service, a dictum which represented its dying gasp.[10]

As long ago as 1921, the California Supreme Court held that "A grossly inequitable and palpably excessive overvaluation of property for taxation may be constructively fraudulent."[11]

The conscious fraud rule has been entirely repudiated during the past twenty-five years. For instance, in *Simms v. County of Los Angeles,* (1950) 35 Cal. 2d 303 at 310, 217 P. 2d 936 at 941, the California Supreme Court holds that "It is not necessary for the plaintiffs to show actual fraud in cases of this nature."

B.

At page 15, the Petition also charges that "the California courts have accepted the mere opinion statement of the assessor as to the ratio of assessment without any substantiation as substantial evidence." It neglects to report that in the case cited this resulted because

---

[9]*Los Angeles Gas & Elec. Co. v. County of Los Angeles,* (1912) 162 Cal. 164, 121 Pac. 384.

[10]*So. Calif. Telephone Co. v. County of Los Angeles,* (1941) 45 Cal. App. 2d 111, 113 P. 2d 773.

[11]*Birch v. County of Orange,* (1921) 186 Cal. 736 at 742, 200 Pac. 647 at 649.

the taxpayers themselves called the assessor as a witness and asked for his opinions without inquiring into either his qualifications or the factual data on which his conclusions were based. As the opinion says, "This necessarily amounted to a waiver" of such substantiation. *Leach Corp. v. County of Los Angeles,* (1964) 228 Cal. App. 2d 634 at 641, 39 Cal. Rptr. 654 (hearing denied by California Supreme Court).

In the case at bar, the assessor didn't even testify!

This is typical of the distorted statements the Petition makes about irrelevant aspects of California law in an attempt to support its argument that California taxpayers have no remedy against overassessments for property tax purposes.[12]

Conclusion.

We submit that the decision below was clearly correct. No important question of federal law is involved. There is no showing that California taxpayers lacked an adequate remedy for discriminatory overassessments either under the law as it was in 1960 or under the amended statutes now in effect. Hence we respectfully submit that there is no reason to grant the Petition herein.

A. R. EARLY,
Assistant County Counsel,
Attorney for Respondents.

Of Counsel:
JOHN D. MAHARG,
County Counsel.

---

[12]See generally, Early, *Local Equalization Practice in California,* 4 Santa Clara Lawyer 147-165 (1964).